IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8227 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

J D VORA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8227 of 1992

MR DP VORA for Petitioner No. 1-5

RULE SERVED for Respondent No. 1

MR DEEPAK V PATEL for Respondent No. 2-3

MR DG CHAUHAN for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 25/09/2001

CAV JUDGEMENT

This is a petition filed by the petitioners above named for appropriate writ, order or direction, under

Article 226 of the Constitution of India declaring that the office order dated 2.3.1988 of the Dy.General Manager, office order dated 16.9.1989 of the General Manager and order dated 11.8.1992 of the Company Secretary of the Gujarat Dairy Development Corporation amending the T.A. Rules and Holiday Rules adversely affecting the petitioners are unconstitutional, null and void being in excess of the authority vested in them and in disregard to the principles of natural justice. The petitioners have also prayed for appropriate writ order or direction directing the respondent Corporation to enforce the Service Rules of 1975 as framed and adopted by the Board of Directors of Gujarat Dairy Development Corporation in favour of the petitioners and to cancel and set aside the office order referred to hereinabove issued by the subordinate officers on the ground that they contravene the decision of the Board of Directors of the Corporation under which the service rules-1975 have been introduced by the Gujarat Dairy Development Corporation. The petitioners have further prayed for directing the respondent Corporation to compensate the petitioners who have been denied the Government Holidays under illegal orders of subordinate officers of the Corporation by forcing them to work on Government holidays. That the earned leave to the credit of petitioners be increased by such number of days on which the petitioners worked, or in lieu of them the petitioners be compensated in the shape of cash payment for having worked on Government holidays as admissible under Rules in force.

2. The petitioners herein were working in different categories in the employment of the Gujarat Dairy Development Corporation (for Short, 'the Corporation') which is a State oriented Corporation. The first respondent is State of Gujarat, second respondent is the Managing Director of the aforesaid Corporation and the third respondent is the General Manager of the said Corporation.

3. The petitioners have contended in their petitions that the respondent Corporation has framed service rules and adopted the same from 1975 providing for the governance of service conditions of its employees. The said rules may be briefly referred to as "the said rules". The petitioners contended that the respondent Corporation is a State within the meaning of Article 12 of the Constitution and, therefore, the respondent Corporation is supposed to act in a fair and just manner. It is also contended by the petitioners that the respondents have enacted the aforesaid service rules of

1975 which have been placed at Annexure 'A' at page 23. That under the said rules, the petitioners were entitled to certain benefits. It is further contended that as per the said service rules, the power to amend the rules has been conferred upon the Corporation itself and, therefore, it cannot be exercised by any other authorities subordinate to the said Corporation. it is further contended that under the said Rules, the petitioners are entitled to travelling allowance as enumerated in rules 43 onwards of the Service Rules. That the said services rules have not been amended by the respondent corporation but some amendments have been made by the Subordinate officers. That the said officer had no authority to alter or amend the said service rules with respect to the payability of Travelling Allowance to the petitioners. It is also contended by the petitioners that the officers of the respondents have also modified the service rules with respect to the holidays to be observed by the petitioners. It is contended that the petitioners were entitled to holidays as per the service rules but by the aforesaid office order, they have been deprived of closed Saturdays i.e. second and fourth and other holidays enumerated in order dated 2.3.1988 placed at Annexure 'B' at page 49. The petitioners contended that the officer issuing the said office order was not entitled to issue such an order since it amounted to altering the service rules. That the said authorities had no power, authority or function to amend or modify the service rules of 1975. It is further contended by the petitioners that by the aforesaid order dated 2.3.1988 the said officer of the respondent Corporation has issued direction for payment of permanent Travelling Allowance. The petitioners contended that the provisions have been made in the service rules for payment of Travelling Allowance and by the aforesaid order of 2.3.1988, the officer of the respondent Corporation has provided that the petitioners would be entitled to permanent Travelling Allowance as stated in the said order. It is again stated by the petitioners that the said officer had no jurisdiction to alter the service rules and, therefore, the rules relating to payment of Travelling Allowance to the petitioners could not have been amended by the said officer of the respondent Corporation. It is further contended that the officer of the respondent Corporation has also issued an order for non-private practice allowance on 16.9.1989. It is also contended that further orders were passed for holidays and permanent Travelling Allowance by the officer of the respondent Corporation on 6/11.8.1992. The petitioners have contended that the aforesaid orders passed by the subordinate officers of the respondent Corporation

adversely affecting the service conditions of the petitioners. It is further contended that as said above, only the Corporation itself could amend the service rules applicable to the petitioners and, therefore, the subordinate officers of the respondent Corporation could not amend the rules and, therefore, the orders passed by the subordinate officers of the respondent Corporation amending the rules are illegal and without jurisdiction and, therefore, they deserve to be quashed and set aside. It is further contended that the service rules could not be altered or amended so as to adversely affect the interest and service conditions of the petitioners and, therefore, the said amendment in service rules is illegal from that angle also. It is, therefore, contended that the aforesaid orders issued by the officers of the respondent Corporation are illegal and without jurisdiction and without any authority of law and, therefore, the petitioners have prayed that those orders referred to hereinabove be quashed and set aside by appropriate writ, order or direction. It is further contended that the respondent Corporation be directed to follow the service rules of 1975. It is further contended that since the petitioners were denied Government holidays, they may be adequately compensated by appropriate orders.

3. On receipt of the aforesaid petition, Rule was issued on 2.12.1992. The respondents have made appearance. Mr D G Chauhan, learned Advocate appeared on behalf of respondents No. 2 and 3 which are the mainly contesting parties. The contesting respondents have filed affidavit of one S J Mehta, Manager (Administration) of the respondent Corporation which has been placed at page 77. The respondent Corporation has also submitted along with the said affidavit an office order dated 6/11.8.1992 at page 84. Thereafter, the Government resolution of 11.4.1989 and 1.4.1989 also were produced. Thereafter the respondent Corporation has produced additional affidavit-in-reply of S J Mehta, Manager (Administration), which has been placed at page 88. Thereafter at page 91, the order of Board of Industrial and Financial Reconstruction (BIFR) has also been produced and it has been contended that the proceedings have been undertaken under the BIFR and therefore, no proceeding should be undertaken before this Court. Therefore, the matter may be dismissed on that technical preliminary ground. The respondents have also contended that the travelling rules have been changed which do not adversely affect the interest of the petitioners, but they are beneficial to the petitioners. The respondents have come out with the case that the

orders are not illegal and, therefore, this petition may be dismissed with costs.

4. I have heard the learned Advocates for the parties and they have argued the matter at a great length. During the course of hearing it has clearly been transpired that though the petition has been filed by five petitions, there is some change which has occurred after the institution of the petition. This can be gathered from the affidavit of S J Mehta at page 88. This affidavit shows that petitioner No.2 Dr. Mansuri has submitted resignation on 29.11.1997 and petitioner No.4 G B Patel has obtained voluntary retirement under the voluntary retirement scheme in the year 1999 and he has been paid his legal dues and has left the job. It is further contended that petitioner No.5 D R Patel's services were terminated on 5.7.1995 and, therefore, he is also not in the job at present. This contention raised in the said affidavit was also a subject-matter of argument of the learned Advocate for the respondent-Corporation and the said fact in the said affidavit has not been seriously disputed by the learned Advocate for the petitioner during the course of his argument. Even no further affidavit has been filed by the petitioners to controvert the said contention of the respondent-Corporation. This means that petitioners No.2,4 and 5 are no longer in service. It appears that out of them petitioner no.4 has already obtained voluntary retirement and his dues have been paid fully. Same way, the second petitioner has already resigned w.e.f. 29.11.1979 and services of petitioner No.5 have been terminated on 5.7.1995. In that contingency, it would not be appropriate to deal with the petition with respect to these three petitioners and, their petitions deserve to be dismissed. It should be considered here that so far as petitioner no.4 is concerned, he has obtained voluntary retirement in the year 1999 and it is not the case of the petitioner that the said retirement was obtained voluntarily by petitioner no.4 subject to the ultimate decision of the present petition. Same is the case of petitioners no.2 and 4. In above view of the matter, I am of the considered view that the petitioners no.2,4 and 5 must fail in the petition and their petition with respect to these three petitioners deserve to be dismissed on the aforesaid consideration.

5. In other words, the petition is required to be considered only with respect to petitioners No.1 and 3. Therefore, we are required to consider as to whether the contentions raised by the petitioners in the petition are

tenable vis-a-vis, petitioner No.1 and 3.

6. The petitioners have contended in the petition that as per the rules governing the service conditions of the petitioners and framed by the respondent-Corporation placed at Annexure 'A' at page 23, any change in the rules will be required to be made by the respondent-Corporation itself by passing a Resolution. That this has not been done in the present case and, therefore, the orders in dispute are in violation of Rule 4 of the said Rules placed at Annexure 'A' and, therefore, the authority which has issued those orders in dispute had no authority to issue the same and, therefore, the orders are without authority of rules and hence without jurisdiction and, therefore, no binding to the present petitioners. The said rules placed at Annexure 'A' at page 23 are called the Gujarat Dairy Development Corporation Ltd. Service Rules, 1975 which shall be hereinafter referred to as 'the said Rules'. Rule 4 of the said rules states that any amendment, change or omission in the said rules will be required to be effected by a resolution of the respondent-Corporation and the said amendment will be required to be published on the notice board of the respondent Corporation or it would be required to be circulated amongst the staff members. However, it has been stated that if there is some irregularity in respect of the publication of the rules, then it would not be treated to be illegal. Any way, rule 4 of the said rules makes it clear that any amendment in the rules will be required to be made by a resolution of the respondent-board.

7. Then we can turn to rule 43 onwards of the said rules. They relate to Travelling Allowance, Halting allowance and other similar allowances. The said rules are from rule 43 to rule 56. All these rules relate to entitlement of the employees to the travelling allowance enumerated in those rules. Therefore, the present petitioners are entitled to the allowances in accordance with rule 43 onwards of the said rules.

8. Rule 60 states that the employees of the respondent-Board shall be entitled to the holidays as per the holidays declared by the Government of Gujarat.

9. So far as the first office order at Annexure 'B' dated 23.3.1988 is concerned, it relates to the grant of holidays and fixed travelling allowance. So far as the fixed travelling allowance is concerned, the rules do not provide for payment of fixed travelling allowance to the petitioners and other employees of the

respondent-Corporation. Therefore, the order directing payment of fixed travelling allowance contained in office order dated 2.3.1988 placed at Annexure 'B' at page 49 amounts to amendment in the said rules. It appears from the said order that it has been signed by Shri S K Desai, Dy.General Manager (P & IR). The petitioners have contended that this office order has been issued by the said officer and not by the respondent-Corporation. It is true that just above the signature of the said officer, it has been mentioned that the office order has been issued on behalf of the respondent-Corporation, but at the same time there is nothing on record to show that there was a resolution passed by the respondent for directing payment of permanent travelling allowance to the employees of the respondent. In other words, there is nothing on record to show that this office order has been issued pursuant to any resolution passed by the respondent. As said above, the said rules do not provide for permanent travelling allowance and the office order directing payment of permanent travelling allowance to the petitioners would amount to amendment in the said rules. As said above, any amendment in the said rules can be made only by resolution of the respondent in accordance with rule 4 of the said rules. It is not the case of the respondent that the office order has been has been merely signed by the Dy.General Manager but it has in fact been issued by the respondent itself by passing a resolution. So on the one hand the office order has been passed by the Dy. General Manager, then there is no case that the said office order has been issued pursuant to any direction of the said board. Then there is nothing on record to show that the respondent had passed a resolution for providing permanent travelling allowance to the petitioners in place of the travelling allowance as provided by rule 43 onwards of the said rules. This would clearly mean that the rules with respect to travelling allowance payable to the petitioners as envisaged in rule 43 onwards has been amended by the aforesaid office order and the said office order has been issued by an officer which is not the respondent itself. In that view of the matter, it would be very clear that the office order in dispute has been issued by an officer not having authority to issue such orders. In view of the provisions made in rule 4 of the said rules. It therefore, can be said that the office order at Annexure 'B' is without authority of rule and it is without jurisdiction.

10. So far as Annexure 'D' at at page 62 is concerned, it is another office order directing that the officers mentioned in clause 5 of the said office order

will not be entitled to holidays of second and fourth Saturdays from 1.9.1989. As said above, the petitioners are entitled to the holidays in accordance with rule 60 of the said rules and according to rule 60 of the said rules the holidays declared to be holidays by the State Government would be treated to be holidays for the purpose of the employees of the respondent. It is an admitted position that the State Government employees are having second and fourth Saturdays as holidays. By office order dated 16.9.1989 Annexure 'D' at page 62, which is impugned in this petition, states that the petitioners would not be entitled to second and fourth Saturdays as holidays w.e.f. 1.9.1989. Again this would amount to an amendment to rule 60 of the said rules. This office order has been issued by the General Manager (D & A). Again, there is no material on record to show that this office order has been issued pursuant to a resolution passed by the respondent in accordance with rule 4 of the said rules. It is not the case of the respondent that the office order has been merely signed by the General Manager, but it has been issued in pursuant to a resolution of the respondent. Therefore, even this office order issued by the General Manager without any resolution of the respondent would be without jurisdiction and without authority of rules. Therefore, it would also be illegal and against the provisions of rules. The reasons recorded for dealing with the first impugned order will also be applicable to the second impugned order Annexure 'D' at page 62 dated 16.9.1989.

11. The third order which is impugned in this petition is dated 6/11.8.1992 which is placed at Annexure 'F' at page 65. The office order states that the petitioners will have to attend the field work on public holidays and they would be required to attend to the full work and for the said work, the petitioners will not be entitled to compensatory off or payment of over time but they will be entitled to travelling allowance or other allowance according to the rules. Again this office order has been issued by the Company Secretary. Again it is the contention of the petitioners that there is no resolution passed by the respondent for issuing this new direction. Even this office order also provides for payment of permanent travelling allowance as detailed in the office order itself. The order further shows that the persons working in the field will be required to have holidays in accordance with the office order dated 2.3.1988 and the remaining employees will be entitled to holidays in accordance with the public holidays declared by the State Government. Again the order with respect to payment of permanent travelling allowance as well as for

the working days, this office order directly amend, the aforesaid rules. As said above, the office order has been issued by the Company Secretary, the petitioners have come out with a case that this office order has been issued without any resolution of the respondent. It is not the case of the respondent that though a resolution has been passed by the respondent. the order has been put to paper and signed by the secretary. In other words, the respondent has not pleaded that resolution has been passed for issuing the aforesaid three impugned orders.

12. It would be relevant to consider an affidavit filed by Shri S J Mehta, Manager (Administration) of the Gujarat Dairy Development which has been placed at page 77. It is the case of the respondent that the order directing payment of permanent travelling allowance is for the benefit of the employees. Whether it is for the benefit of the employees or for other purpose would not be relevant for the purpose of deciding as to whether the officer issuing the office order had to issue the same. The pointed question is as to whether the office orders have been issued by the concerned officers after following the procedure for amending the rule as per rule 4 of the said rules. Learned Advocate for the respondent was not in a position to read out from the said affidavits that some resolution was passed by the respondent and on the basis of the said resolution the aforesaid impugned orders were issued by the concerned officers. Once it is found that the office orders were issued pursuant to resolution of the respondent, then it would not be material as to who has signed the same. The officer signing the office order would simply carry out the resolution passed by the respondent. On the other hand, if once it is found that the office order has been issued by a particular officer and it is also found that the office order is issued without resolution of the respondent and when it is further found that the office order amounts to amendment in the said rules, then the office order issued amending the said rules without following the procedure laid down in rule 4 would not be treated to be legal and valid.

13. Therefore, on this count, it is apparent that the three impugned orders have been issued by the officers of the respondent without following rule 4 of the said rule. In other words, all the three impugned orders have been issued without any resolution of the respondent as required under rule 4 of the said rules.

14. Even learned Advocate for the respondent has not

argued that the office orders have been issued after following the procedure laid down in rule 4 of the said rules. It is not the argument of the learned Advocate for the respondent that the respondent had passed a resolution and in pursuant to the said resolution, the office orders in dispute were issued by the concerned officers. Therefore, by and large, it is an admitted fact that the impugned orders have been issued by different officers without following rule 4 of the said rules. Therefore, all the three orders have to be treated to be without authority of rules and, therefore, without jurisdiction and against the provisions made in rule 4 of the said rules.

15. Certain orders were brought to my notice. One of the office orders is found to be dated 19.2.1987 bearing no. MD/DP-87/167 and office order dated 27.6.1991 bearing No.MD/DP-144 was also shown. It seems to have been issued by the Managing Director delegating certain powers enumerated in the office order to the Company Secretary at the Head Office. This would mean that the Managing Director had power to delegate and in exercise of the said power, he has delegated certain functions to the Company Secretary. It shows that the Managing Director has conferred certain powers to the Dy.General Manager. simply because the Managing Director has certain powers and if he has power to delegate his powers to subordinate officers and if the said officer delegate, his powers to his subordinate officer, the said delegation need not be challenged or cannot be challenged. In the present case, we do not find any provision for delegation of powers by the respondent. In other words, there is no resolution/office order issued by the said respondent delegating its powers to issue orders in question to the officer who have passed the same. In other words, the respondent has not delegated powers to issue the impugned orders to the officers who have issued the same. Even otherwise, I am not shown any rules under which the respondent can delegate its powers of amending the said rules to a subordinate officer. Any way it is very clear that the impugned orders have been issued by the officers having no authority to amend the rules and the office orders issued which are impugned in this petition, in fact, amount to amendment in the said rules without following the procedure laid down in rule 4 of the said rules.

16. It is very clear that the said rules do not provide for delegation of powers to the officers of the respondent-board. The impugned orders have been issued without following rule 4 of the said rules. There is no

provision in the said rules for issuing certain orders amounting to the amendment in the rules without amending the rules themselves. Even if the impugned orders are in the interest of the petitioners, it would not be possible to uphold the same, on that consideration. Since they have been issued without following rule 4 of the said rules and the office orders have been issued by the authority having no authority to issue the same. The net result is that the impugned orders are illegal, inasmuch as they have been issued without following the procedure laid down in rule 4 of the said rules. In other words, the impugned orders are illegal and without jurisdiction on the ground that no resolution of the respondent has been passed for amending the rules in accordance with rule 4 of the said rules.

17. Moreover, the office orders in question amounts to amendment in the rules since the travelling allowance, holidays and other benefits have been provided by rules and not by administrative instructions. If there is some administrative instruction, it can be changed from time to time in accordance with exigency at particular point of time. But so far as the rules are concerned, they can be amended in accordance with the provisions in the rules. Here, rule 4 provides for resolution of the respondent, for the purpose of amending the rules and that rules have not been followed and therefore, the impugned orders are illegal and without jurisdiction and, they are required to quash and set aside.

18. The petitioners have also claimed a relief that the petitioners be provided compensation since they are required to work on second and fourth Saturdays on number of occasions and, therefore, they should be compensated for the work done by them on those second and fourth Saturdays.

19. I am of the opinion that though the said office orders required the petitioner to work on second and fourth Saturdays and though the said rule do not provide for, the same, nevertheless it appears that the petitioners were required to work in the field and, therefore, they were required to work on second and fourth Saturdays and other holidays, in view of the fact that the work had increased and services of the petitioners were required. In case of urgency, looking to the nature, duties and function of the petitioners, it can be said that there was some justification on the part of the respondent in calling them on duty on second and fourth Saturdays as well as on other holidays.

20. Learned Advocate for the petitioners has argued at length that the officers of the same cadre working in the Head Office were not required to work on second and fourth Saturdays. It is a matter of fact that the Head Office would carry out administrative work and, therefore, it may not be necessary for the officers working in administrative offices to work on second and fourth Saturdays. There may not be any urgent work or emergent duties to be performed by them but so far as the officers working in the field are concerned, they are not similarly situated and, therefore, they cannot be put on par with the officers working in the Head office.

21. We can take an example of Medical Officers working in the dispensary who are not granted many holidays. They do not have second and fourth Saturdays as holidays but their counterparts working in the office as Assistant Director or Dy.Director and doing only administrative work, may be allowed second and fourth Saturdays as holidays. Therefore, looking to the nature of the work done by the petitioners, it cannot be said that there was absolutely no justification on the part of the respondent in calling them on duty on second and fourth Saturdays. Therefore, there is no justification on their part in seeking compensation for the second and fourth Saturdays and other holidays for which they may have been required to work.

22. At the same time, it is also required to be considered that the benefit to which the petitioners are getting is on account of technicalities of rules. On the other hand, the respondent may have power to pass different orders by passing resolutions to regulate the payment of allowance etc. Same way, the respondent may have powers by passing resolutions for regulating holidays for the petitioners and other employees. However, it is not necessary in this petition to express any opinion on the aforesaid issues and, therefore, this petition is not being decided on merit as to whether or not the respondent had power to issue such orders. The petition is being allowed on the aforesaid technicalities that there is no resolution passed by the respondent for amending the said rules in accordance with rule 4 of the said rules.

23. So on the one hand the petitioners will succeed and the petition will be required to be allowed vis-a-vis petitioners No.1 and 3 in the aforesaid petitions only, on the other hand, the petitioners will not be entitled to compensation for the reasons stated hereinabove.

24. Learned Advocate for the respondents has contended that the respondent unit has been declared sick unit under the Sick Industrial (Special Provisions) Company Act, 1985 by the BIFR in case No.607/94 and no financial burden be imposed upon the respondent. Now, so far as the petitioners are concerned, it has been argued that the respondent is actually functioning and making payment of salary and allowances to its employees. However, in case of necessity, petitioner No. (1) and (3) may approach the appropriate authority. However, the said authority may not be able to decide the present dispute between the parties. Therefore, the petition! cannot be dismissed on the sole ground that the respondent has been declared Sick Unit.

25. Since the matter is being disposed of on the solitary ground regarding jurisdiction of officers passing impugned orders altering the said rules relating to service condition of the petitioners only, it is not necessary to consider other grounds.

26. For the foregoing reasons, this petition is allowed vis-a-vis petitioners No.1 and 3 and the impugned orders dated 2.3.1988, 16.9.1989 and 6/11.8.1992 placed at Annexure 'B', 'D' and 'F' respectively at page 49, 62 and 65 respectively are held to be against the Gujarat Dairy Development Corporation Ltd. Service Rules, 1975 and hence are illegal, null and void having been passed without authority of rules and hence without jurisdiction. The respondent is hereby ordered to be prevented from implementing the impugned orders against petitioners No.1 and 3. The prayer for granting compensation is hereby rejected.

27. It is further directed that this direction will not hold good in respect of the claim of petitioners No.(1) and (3) already decided. The petition stands dismissed with respect to the remaining petitioners.

In the facts and circumstances of the case, there shall be no order as to costs. Rule is made absolute to the aforesaid extent.

Date:25.9.2001 [D P Buch, J.]
msp